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SUMMARY RECORD OF THE 4th MEETING

Chairman: Mr. LAMPTEY (Ghana)

CONTENTS

ELECTION OF THE VICE-CHAIRMAN AND RAPPORTEUR

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued)

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The meeting was called to order at 3.35 p.m.

ELECTION OF THE VICE-CHAIRMEN AND RAPPORTEUR

1. The CHAIRMAN said that the consultations on the election of the other officers of the Committee had been unsuccessful; he therefore urged the parties directly involved to work out a compromise so that the issue would not have to be resolved through the application of the relevant provisions of the rules of procedure. If he heard no objections, he would take it that the Committee agreed to defer the election of the two Vice-Chairmen and the Rapporteur to the following meeting.

2. It was so decided.

AGENDA ITEM 138: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SEVENTH SESSION (continued) (A/49/17 and A/49/427)

3. Mr. STRAUSS (Canada) said it was to be hoped that the Committee would recommend to the General Assembly that it adopt a resolution encouraging States to consider promulgating legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services.

4. The Working Group on International Contract Practices, of which Canada held the chairmanship, was nearing completion of its work on a draft convention on independent guarantees and stand-by letters of credit which, it was to be hoped, could be discussed at the next session of UNCITRAL. With regard to electronic data interchange, Canada believed that it was of the utmost importance for UNCITRAL to continue its efforts to achieve uniformity in laws affecting electronic data interchange; however, the rapid pace of technological change suggested that proposals for future work in that area must be considered thoroughly so as to ensure that the results would not only serve immediate needs, but would facilitate international trade in the future. His Government was currently holding consultations with governmental and private interests in that area.

5. With regard to the future work of UNCITRAL, his delegation encouraged the Commission to work in close cooperation with UNIDROIT in seeking uniformity in the area of assignment of claims. His delegation was pleased to note the cooperation between UNCITRAL and INSOL International in the area of cross-border insolvency and looked forward to the colloquium of bankruptcy judges which would take place in March 1995 in Toronto.

6. His Government was not in favour of the working groups holding consecutive meetings. He urged the Committee, in the resolution on UNCITRAL to be adopted at the current session, to leave the Secretariat free to schedule working group meetings taking into account the need to rationalize its work and to ensure prompt preparation and distribution of documents so as to enable delegations to

prepare thoroughly for meetings, thus ensuring the effective functioning of UNCITRAL.

7. Mr. CHATURVEDI (India) said that the Commission should continue its work on the draft Guidelines for Preparatory Conferences in Arbitral Proceedings. His country was currently reviewing its arbitration law with a view to encouraging more frequent resort to the arbitral process as opposed to litigation as a means of settling disputes, particularly in commercial matters.

8. With regard to the uniform legal rules on electronic data interchange prepared by the Working Group, his delegation believed that they would be of great help in clarifying the legal issues involved in electronic data interchange and avoiding disputes which could arise from the increasing use of electronic data interchange in international business and financial sectors. The rules to be adopted in that area must be sufficiently flexible and should provide for early review depending on technological advances. His delegation hoped that such issues as the scope of application of the rules and party autonomy would be resolved in future meetings of the Working Group on Electronic Data Interchange and that a draft set of core provisions could be completed.

9. With regard to the report of the Working Group on International Contract Practices, his delegation agreed that the title of the draft convention should refer to "independent guarantees and stand-by letters of credit" rather than use the term "guaranty letters".

10. With regard to the legal aspects of receivables, financing, UNCITRAL should emphasize cooperation with other organizations dealing with the same topic. His delegation supported the recommendation that the Secretariat should prepare a study that would discuss in more detail the issues that had been identified, possibly accompanied by a first draft of uniform rules.

11. The question of cross-border insolvency should be studied in greater depth since, in the management of the issue, complex legal issues could arise in cases involving corporations with activities in several countries.

12. His delegation had no objections to future work on build-operate-transfer (BOT) projects being undertaken by the Commission since, in the case of large-scale infrastructure projects, the use of guidelines for the development, negotiating and contracting of BOT projects could benefit developing countries.

13. Lastly, his delegation reaffirmed its support for the Commission's programme of training and assistance funded by the UNCITRAL Trust Fund for Symposia.

14. Mr. MOLDE (Denmark), speaking on behalf of the Nordic countries, noted with satisfaction that provisions on services had been added to the UNCITRAL Model Law on Procurement of Goods and Construction.

15. The Nordic countries believed that the work of UNCITRAL was progressing satisfactorily; they supported the principle that the Commission should deal

with topics of global significance while, at the same time, including in its work topics of special interest to developing countries.

16. With regard to the future work of UNCITRAL, it should be borne in mind that resources were scarce and that the Commission's main role was to facilitate tasks for the international business community. Therefore, the Commission should continue to produce texts of practical value within a relatively limited period of time, while avoiding duplication of work.

17. Mr. SIDI-ABED (Algeria) said that UNCITRAL was playing an increasingly important role in the development, harmonization and consolidation of the codification of international trade law. The subjects with which it dealt were of particular interest to the developing countries, which were doing their utmost to harmonize their laws with international rules concerning trade law and to adapt to the great changes that had recently taken place in the international economy. UNCITRAL must not lose sight of the fact that one of its major objectives was to secure the adoption of legal rules guaranteeing a degree of equity in international trade relations, so that the developing countries could receive treatment enabling them to overcome the difficulties posed for them by the international economic situation. In that regard, mention should be made of the measures being taken in his country to ratify various trade conventions or to accede to them.

18. With regard to the UNCITRAL Model Law on Procurement of Goods and Construction, he endorsed the decision by the Working Group to devote a separate chapter to procurement of services, since that would allow the necessary flexibility to enable countries to incorporate the Model Law already adopted into their trade legislation, and subsequently to incorporate the provisions relating to services.

19. His delegation considered that the Secretariat must continue its work with a view to submitting to the next session of UNCITRAL a revised draft on international commercial arbitration, which would allow for closer examination of the Guidelines for Preparatory Conferences in Arbitral Proceedings, the purpose of which was to facilitate their use by the parties.

20. His delegation expressed satisfaction at the progress made in the work on the draft convention on guarantees and stand-by letters of credit.

21. The harmonization of rules on electronic data interchange was a difficult task, particularly on account of the differences between developing and developed countries in that area and the speed with which the technological media used were evolving. For that reason, preparation of the draft provisions at the twenty-eighth or twenty-ninth session of UNCITRAL could constitute the general framework for facilitating wider use of media of that type at the international level.

22. His delegation again expressed its appreciation of the efforts made by the Secretariat to establish a system for collection and dissemination of information on case-law on UNCITRAL texts.

23. With regard to training, he noted with appreciation the efforts made by UNCITRAL to organize or assist in organizing seminars and symposia to promote the wider dissemination of international trade law, particularly in the developing countries, and urged it to continue those activities.

24. Lastly, UNCITRAL must strive to ensure the universality of its work by facilitating and encouraging participation by the developing countries in its own sessions and those of its working groups. In that way, universal accession to the legal instruments drafted under its auspices would be strengthened, and international cooperation would be the expression of a proper balance between the raison d'être of the Commission, namely, the development and harmonization of the rules of international trade law, and the need to secure lasting development for the developing countries.

25. Mr. LEGAL (France) said that his delegation particularly welcomed the adoption of a Model Law on Procurement of Services one year after the adoption of the Model Law on Procurement of Goods and Construction. It considered the solution of incorporating a specific chapter on services in the latter Model Law to be the correct one. In that way States would have at their disposal a single, coherent and highly flexible text which they could easily integrate into the framework of their domestic law.

26. With regard to the draft convention on guarantees and stand-by letters of credit, he hoped that the Working Group would be able to submit an appropriate text to UNCITRAL for adoption at its twenty-eighth session.

27. An order of priority should also be established for the work on electronic data interchange (EDI). His delegation believed it was necessary to study in depth the distribution of liability of the network of EDI users and service providers. That question had priority, even though UNCITRAL appeared to favour giving preference to preliminary work on rights in goods in a computer-based environment.

28. He expressed some reservations concerning the draft Guidelines for Preparatory Conferences in Arbitral Proceedings, as the draft appeared to be superfluous in the case of simple proceedings, could add unnecessary rigidity in complex cases, and significantly increased the cost of the proceedings. In addition, the preparatory conferences procedure favoured the better organized parties, inasmuch as they could block positions from the outset, an option not available to the other parties. Lastly, establishment of a preparatory conference would deprive the arbitral tribunal of its option of pronouncing on questions of procedure, and would thus contravene the provisions of the UNCITRAL Arbitration Rules.

29. His delegation observed that the French version of the working documents, and perhaps versions in other languages, were sometimes made available only very shortly before the sessions, and considered that an attempt should be made to rectify that situation, given that the quality of the consideration of the texts and of the preparation of UNCITRAL sessions and those of the working groups were at stake.

30. The convening of regional seminars to provide training in the techniques of international trade law was to be welcomed, and France expressed its support for the Trust Fund for Symposia mechanism intended to assist in financing travel expenses.

31. Ms. WILLSON (United States of America) said that the United States continued to support UNCITRAL's non-politicized and technically focused approach to work on trade law. The United States had recently deposited its instrument of accession to the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Protocol, and urged States that had not yet done so to ratify the Convention and the Protocol with a view to harmonizing rules in that area of trade law.

32. At the May 1994 plenary, UNCITRAL had carried out a preliminary review of the Guidelines for Preparatory Conferences in Arbitral Proceedings. The United States hoped that the Commission's future agenda would include work on procedural law, particularly in the areas of access to foreign courts and judicial cooperation concerning international bankruptcy.

33. The Commission had completed its first Model Law on Procurement of Goods and Construction in 1993, and a revised version had been produced in 1994 which included the procurement of services. The United States had supported that work and hoped that it would help to harmonize rules on public agency acquisitions internationally. The Model Law would promote efficiency, transparency and market orientation in regulations and commercial laws. That would result in greater openness to foreign bidding and would therefore enhance the flow of trade. It would thus be appropriate to pass a separate resolution on that subject in the General Assembly.

34. The United States considered that the draft Convention on Independent Guarantees and Stand-by-Letters of Credit would also facilitate trade and hoped that the Commission would complete work on it at the next plenary session in May 1995. To ensure the impact of the convention in the field of trade law, it would be necessary to submit it through the Sixth Committee to the General Assembly at its fiftieth session for adoption. Member States would then be able to begin the processes of signature and ratification. There were precedents for that procedure.

35. Lastly, she joined others in opposing the "back-to-back" scheduling of meetings, which made it difficult for experts on specialized topics to attend.

36. Mr. ZHANG Kening (China) praised the serious work done by the Commission, which had led to progress in the harmonization and unification of international trade law. The active participation and support of its members, together with contributions from other international organizations and from specialists in the subject from many countries, had resulted in the adoption of a series of conventions and model laws, including the Convention on Contracts for the International Sale of Goods, the Model Law on Procurement of Goods, Construction and Services, and the draft Guide to Enactment. It had also reviewed the work

of the Working Groups on Electronic Data Interchange and International Contract Practices.

37. Nevertheless, the adoption of conventions and model laws was only a first step in the Commission's work towards unification of trade law. The Commission should also adopt measures, including a publicity drive, to encourage speedy acceptance of such uniform laws by various States. The participation of developing countries in the Commission's work remained less than adequate. He hoped that the Commission would be able to create favourable conditions for increased participation by those countries in order to strengthen the universal basis for uniform legislation.

38. After recalling China's role in the Commission's work, and its accession to the various instruments drafted by the Commission, he repeated that his country wished to continue to contribute to the work of unification and harmonization of international trade. China would therefore be running for reelection for another term beginning next May.

39. Mr. MOTSYK (Ukraine) said that his delegation considered the Commission's work very useful for all countries, particularly for newly independent States, including Ukraine, which were in transition to a market economy and were developing their national legislation. Ukraine was a party to many instruments, such as the Convention on the Limitation Period in the International Sale of Goods. The Ukrainian Parliament had recently adopted the International Commercial Arbitration Act, based on the Commission's Model Law, and Regulations on International Commercial Arbitration and Regulations for Ukraine's Maritime Arbitration Commission.

40. Ukraine welcomed the adoption of the Commission's Model Law on Procurement of Goods, Construction and Services, which would foster integrity, confidence, fairness and transparency in the public procurement process. Objectivity, efficiency and competition would also be enhanced, as would the harmonization of rules in the sphere of international economic relations. Lastly, such measures would assist all States in formulating procurement laws or improving existing legislation. That was true of Ukraine, which was currently considering the possibility of elaborating national legislation in that field.

41. The Ukrainian delegation welcomed the Secretariat's initiative in preparing draft Guidelines for Preparatory Conferences in Arbitral Proceedings. Those guidelines, apart from their practical use, could have an important educational effect. The consideration of the draft guidelines had been very constructive, and he hoped that the Secretariat would be able to submit a revised text for consideration at the Commission's next session.

42. Ukraine welcomed the continuation of the work on the standardization of legal issues in electronic data interchange and the preparation of a uniform law on guarantees and stand-by letters of credit. It also gave full support to the decision to endorse the 1993 version of the Uniform Customs and Practice for Documentary Credits. That endorsement would promote world-wide acceptance of the instrument and facilitate international trade.

43. His delegation also appreciated the Commission's work in training and technical assistance, which would permit wider dissemination of its ideas and aims and facilitate the implementation of its legal instruments.

44. As to the future work of the Commission, Ukraine placed particular importance on the question of cross-border insolvency and on legal aspects of receivables financing. However, it did not fully agree with the decision to postpone consideration of legal issues in privatization. The principles governing the participation of foreign investors in privatization could soon be drafted. That would be of great assistance to countries in transition to a market economy.

45. Mr. SHESTAKOV (Russian Federation) said that his delegation welcomed the fact that the Commission's work was having practical results, an example being the Model Law on the Procurement of Goods, Construction and Services, whose application would result in more efficient use of money and would prevent conditions arising which could encourage corruption. At the same time, it would allow the process of harmonization of the various national laws on the subject to continue. The Model Law was the happy conclusion to a difficult task and represented a reasonable balance between the rights and obligations of the procuring entities on the one hand, and those of the suppliers or contractors on the other. Other multilateral instruments had been useful in that work, notably the GATT Agreement on Government Procurement, approved in the Uruguay Round. The Model Law was of practical importance to the Russian Federation, not only because public procurement represented a considerable portion of the national economy, but also because it would assist the country in the task of replacing the quite unsatisfactory variety of regulations currently in force in that sector.

46. Concerning the Guidelines for Preparatory Conferences in Arbitral Proceedings, to which the Commission had also given special attention during the twenty-seventh session, he said that such conferences should be held only in very complex cases. Once approved, the final version would make a worthwhile contribution to the improvement of arbitral proceedings.

47. It was important for the Commission to continue considering the legal issues which arose in the drafting of contracts or in the relations between users of electronic data interchange. However, notwithstanding the importance of those problems, particularly for future international commercial practice, it was clear that the Commission should first establish a clear definition of the basic legal issues.

48. With regard to the preparation of a draft convention on independent guarantees and stand-by letters of credit, he trusted that the text would be presented to UNCITRAL in 1995.

49. As to future work, his delegation noted with satisfaction that UNCITRAL had been carefully examining the various proposals made by participants at the 1992 Congress. The question of cross-border insolvency was of general interest, given that different procedures were currently being used to solve the problems

involved and that the development of world trade was closely tied to the need to regulate legal processes involving creditors and debtors domiciled in different countries. While it would not be advisable at the current stage to elaborate uniform legislation in that field, it would be useful to continue examining the question of granting foreign creditors access to the courts and that of recognition of orders issued by foreign courts in insolvency cases. In that connection, the proposal of INSOL International to organize a colloquium of judges on judicial cooperation in cross-border insolvency was logical.

50. UNCITRAL had, without question, made a valuable contribution throughout its existence to the development of international trade law. At the same time, it would not be fair to downplay the contribution of other international organizations in that respect. Accordingly, it was important that the Commission's work should be carried out in such a way as to avoid duplication.

51. It was encouraging to see that the UNCITRAL Secretariat continued to pay special attention to training and technical assistance, even though it did not have enough financial and human resources for the task. It was to be hoped that in the future countries with economies in transition could also actively participate in that process.

52. Mr. STAKER (Australia) said that his country had always participated actively in the work of UNCITRAL, an organization which played a key role in helping the United Nations pursue its goal of promoting the progressive harmonization and unification of international trade law.

53. The Commission's main project at its most recent session had been to extend the reach of the Model Law on Procurement of Goods and Construction to include procurement of services. He hoped that the completed text, which would have the effect of promoting economy and efficiency in government procurement, would find wide acceptance and application.

54. His country recognized the importance of the Commission's work in developing a draft convention on independent guarantees and stand-by letters of credit and in elaborating a uniform law on electronic data interchange, and would continue to participate actively in the relevant working groups. It commended, in particular, the forward-looking approach taken by UNCITRAL with regard to the legal issues arising from electronic data interchange and related means of data communication. It also trusted that the draft Guidelines for Preparatory Conferences in Arbitral Proceedings, the first draft of which had been considered at the Commission's twenty-seventh session, would be completed by 1995.

55. His country supported the Commission's work in the area of training and technical assistance and would continue to participate in regional initiatives. In that connection, the Willem Vis International Commercial Arbitration Moot, organized by the Institute of International Commercial Law at Pace University with UNCITRAL support, provided an ideal forum for the discussion of the Commission's texts and for the dissemination of information about those texts to

universities and potential future international lawyers. Australia had participated in the inaugural meeting in 1994.

56. His delegation welcomed the operation of the Case-law on UNCITRAL Texts system (CLOUT) as an additional tool for international trade law research.

57. He referred to the International Trade Law Conference organized annually by his country; in 1994, the Conference would focus on the outcomes of the Uruguay Round and their significance for Australia and the region. The Conference would once again make use of the work done by UNCITRAL.

58. Mr. ENAYAT (Islamic Republic of Iran) said that his country attached great importance to the work of UNCITRAL, in which it had participated actively. The Central Bank had adopted in December 1993 the basic principles underlying the Model Law on International Credit Transfers. It had adopted that system in view of the increasing use of electronically-transmitted payment orders. With regard to dissemination of UNCITRAL texts, the importance of which was obvious, the Iranian Ministry of Foreign Affairs had recently prepared and published in the Persian language an exhaustive commentary on the Model Law on International Credit Transfers.

59. Similarly, his country attached great importance to the preparation of legal rules on electronic data interchange and took the view that, in future, the Working Group on Electronic Data Interchange should consider the legal issues which might arise in the context of relations between service users and providers, such as electronic communications networks.

60. In respect of the UNCITRAL Model Law on Procurement of Goods, Construction and Services, the text of which had been adopted by the Commission at its twenty-seventh session, it was to be hoped that the Model Law would be another significant UNCITRAL contribution to the development of international trade law.

61. His delegation welcomed the preparation of the draft Guidelines for Preparatory Conferences in Arbitral Proceedings. At the same time, other considerations should be taken into account in that regard. First, the advisability of holding one or more preparatory conferences depended on the circumstances of each particular case; secondly, the arbitral tribunal should not hold preparatory conferences if one of the parties objected and failed to participate in them; and thirdly, the revision of the draft Guidelines should be entrusted to one of the Commission's working groups.

62. His delegation also welcomed the compilation of three editions of the CLOUT series, which contained abstracts of court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. In future, that initiative could be expanded by communicating it to users, encouraging them to formulate observations and to carry out scientific research.

63. As to the possibility of recommending the use of the Uniform Customs and Practice for Documentary Credits as revised by the International Chamber of Commerce, any decision by UNCITRAL in that regard must be taken with careful consideration.

64. Lastly, he expressed his appreciation for the Commission's activities in the fields of training and technical assistance, which were of great importance to developing countries.

The meeting rose at 5.05 p.m.